

# SENATE BILL 475

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By: **Senator Stone**

Introduced and read first time: February 1, 2010

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Operating a Vessel While Under the Influence of or Impaired by Alcohol or**  
3 **Drugs – ~~Compulsory~~ Testing**

4 FOR the purpose of providing that a person who operates or attempts to operate a  
5 vessel on the waters of the State is deemed to have consented, subject to certain  
6 provisions of law, to take a certain test to determine alcohol concentration or  
7 drug or controlled dangerous substance content if the person is detained under  
8 certain circumstances; providing that a person may not be compelled to take a  
9 certain test, subject to a certain exception; requiring a detaining officer to  
10 advise a person detained under certain circumstances that, if the person refuses  
11 to take a certain test, or takes the test and the results indicate a certain alcohol  
12 concentration, on conviction of a certain violation the court may prohibit the  
13 person from operating or attempting to operate a vessel for a certain period;  
14 requiring a person to submit to certain tests of the person's breath or blood to  
15 determine alcohol concentration or drug or controlled dangerous substance  
16 content if the person is involved in an accident while operating or attempting to  
17 operate a vessel that results in the death of, or life-threatening injury to,  
18 another person and the person is detained by a police officer who has reasonable  
19 grounds to believe that the person has been operating the vessel while under  
20 the influence of alcohol or impaired by alcohol, drugs, a combination of alcohol  
21 and drugs, or a controlled dangerous substance; providing that medical  
22 personnel who perform certain tests are not liable for civil damages under  
23 certain circumstances; providing for the admissibility of evidence of certain tests  
24 or analyses under certain circumstances; making certain conforming and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 stylistic changes; and generally relating to operating a vessel while under the  
2 influence of or impaired by alcohol or drugs.

3 BY renumbering

4 Article – Natural Resources

5 Section 8–738.1

6 to be Section 8–738.2

7 Annotated Code of Maryland

8 (2007 Replacement Volume and 2009 Supplement)

9 BY repealing and reenacting, with amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 10–309(a) and (d)  
12 Annotated Code of Maryland  
13 (2006 Replacement Volume and 2009 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Natural Resources  
16 Section 8–738  
17 Annotated Code of Maryland  
18 (2007 Replacement Volume and 2009 Supplement)

19 BY adding to  
20 Article – Natural Resources  
21 Section 8–738.1  
22 Annotated Code of Maryland  
23 (2007 Replacement Volume and 2009 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That Section(s) 8–738.1 of Article – Natural Resources of the Annotated  
26 Code of Maryland be renumbered to be Section(s) 8–738.2.

27 ~~SECTION 2. AND BE IT FURTHER ENACTED BY THE GENERAL~~  
28 ~~ASSEMBLY OF MARYLAND,~~ That the Laws of Maryland read as follows:

29 **Article – Courts and Judicial Proceedings**

30 10–309.

31 (a) (1) (i) Except as provided in § 16–205.1(c) of the Transportation  
32 Article ~~OR § 8–738(b)(3) 8–738.1 OF THE NATURAL RESOURCES ARTICLE~~, a  
33 person may not be compelled to submit to a test or tests provided for in this subtitle.

34 (ii) Evidence of a test or analysis provided for in this subtitle is  
35 not admissible in a prosecution for a violation of § 16–113 or § 21–902 of the  
36 Transportation Article, § 8–738 of the Natural Resources Article, or Title 2, Subtitle 5,

1 § 2–209, or § 3–211 of the Criminal Law Article if obtained contrary to the provisions  
2 of this subtitle.

3 (2) The fact of refusal to submit is admissible in evidence at the trial.

4 (d) Nothing in this section precludes or limits admissibility of evidence of a  
5 test or analysis to determine the alcohol concentration of a person's blood or breath  
6 which is obtained as provided in § 16–205.1(c) of the Transportation Article OR §  
7 ~~8–738(B)(3)~~ 8–738.1 OF THE NATURAL RESOURCES ARTICLE.

### 8 Article – Natural Resources

9 8–738.

10 (a) A person may not operate or attempt to operate a vessel while the person:

11 (1) Is under the influence of alcohol;

12 (2) Is impaired by alcohol;

13 (3) Is so far impaired by any drug, combination of drugs, or  
14 combination of one or more drugs and alcohol that the person cannot operate a vessel  
15 safely; or

16 (4) Is impaired by any controlled dangerous substance, as defined in §  
17 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled  
18 dangerous substance under the laws of the State.

19 (b) (1) Except as provided under paragraph (2) of this subsection, the  
20 evidentiary presumptions and procedures established under §§ 10–302 through  
21 ~~10–308~~ 10–309 of the Courts Article are applicable to any violation of this section.

22 (2) If at the time of testing an individual has an alcohol concentration  
23 that meets the definition of “under the influence of alcohol per se” in § 11–174.1 of the  
24 Transportation Article, as determined by an analysis of the individual's blood or  
25 breath, it shall be prima facie evidence that the individual was operating a vessel  
26 while under the influence of alcohol.

27 (3) ~~(1) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE~~  
28 ~~OPERATING OR ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE~~  
29 ~~DEATH OF, OR A LIFE THREATENING INJURY TO, ANOTHER PERSON AND THE~~  
30 ~~PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS~~  
31 ~~TO BELIEVE THAT THE PERSON HAS BEEN OPERATING A VESSEL OR~~  
32 ~~ATTEMPTING TO OPERATE A VESSEL WHILE UNDER THE INFLUENCE OF~~  
33 ~~ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY~~  
34 ~~DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE~~

~~1 DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE A VESSEL  
2 SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE  
3 PERSON SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE OFFICER, TO A  
4 TEST OF:~~

~~5 1. THE PERSON'S BREATH TO DETERMINE ALCOHOL  
6 CONCENTRATION;~~

~~7 2. ONE SPECIMEN OF THE PERSON'S BLOOD TO  
8 DETERMINE ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR  
9 CONTROLLED DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR~~

~~10 3. BOTH THE PERSON'S BREATH UNDER ITEM 1 OF  
11 THIS SUBPARAGRAPH AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER  
12 ITEM 2 OF THIS SUBPARAGRAPH.~~

~~13 (H) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST  
14 REQUIRED BY THIS PARAGRAPH ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS  
15 THE RESULT OF ANY ACT OR OMISSION RELATED TO THE TEST, NOT AMOUNTING  
16 TO GROSS NEGLIGENCE. ANY PERSON WHO OPERATES OR ATTEMPTS TO  
17 OPERATE A VESSEL UPON THE WATERS OF THE STATE IS DEEMED TO HAVE  
18 CONSENTED, SUBJECT TO THE PROVISIONS OF §§ 10-302 THROUGH 10-309 OF  
19 THE COURTS ARTICLE, TO TAKE A TEST IF THE PERSON IS DETAINED BY A  
20 POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE  
21 PERSON HAS BEEN OPERATING OR ATTEMPTING TO OPERATE A VESSEL WHILE  
22 UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO  
23 FAR IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION  
24 OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT  
25 OPERATE OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY  
26 A CONTROLLED DANGEROUS SUBSTANCE.~~

~~27 (C) (1) EXCEPT AS PROVIDED IN § 8-738.1 OF THIS SUBTITLE, A  
28 PERSON MAY NOT BE COMPELLED TO TAKE A TEST.~~

~~29 (2) UPON CONVICTION AND IN ADDITION TO ANY OTHER  
30 PENALTIES, A COURT MAY PROHIBIT A PERSON FROM OPERATING A VESSEL ON  
31 THE WATERS OF THE STATE FOR A PERIOD OF 1 YEAR IF THE PERSON WAS  
32 DETAINED BY A POLICE OFFICER WHO HAD REASONABLE GROUNDS TO BELIEVE  
33 THAT THE PERSON WAS OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF  
34 ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY  
35 DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE  
36 DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE OR ATTEMPT TO  
37 OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED  
38 DANGEROUS SUBSTANCE AND THE PERSON REFUSED TO TAKE A TEST, OR WAS~~

1 TESTED AND THE RESULT INDICATED AN ALCOHOL CONCENTRATION OF 0.08 OR  
 2 MORE.

3 (3) A DETAINING OFFICER WHO HAS REASONABLE GROUNDS TO  
 4 BELIEVE THAT A PERSON WAS OPERATING A VESSEL WHILE UNDER THE  
 5 INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR  
 6 IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF  
 7 ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE  
 8 OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A  
 9 CONTROLLED DANGEROUS SUBSTANCE SHALL ADVISE THE PERSON OF THE  
 10 SANCTIONS THAT MAY BE IMPOSED BY A COURT IF THE PERSON REFUSES TO  
 11 TAKE A TEST OR TAKES A TEST AND THE RESULT INDICATES AN ALCOHOL  
 12 CONCENTRATION OF 0.08 OR MORE.

13 ~~(D)~~ (D) It is not a defense to a charge of violating subsection (a)(3) of this section  
 14 that the person charged is or was entitled under the laws of this State to use the drug,  
 15 combination of drugs, or combination of [1] ONE or more drugs and alcohol, unless the  
 16 person was unaware that the drug or combination would make the person incapable of  
 17 safely operating a vessel.

18 ~~(E)~~ (E) (1) Notwithstanding any other provision of this title, a person who  
 19 violates [paragraph (1) of] subsection (a)(1) of this section is guilty of a misdemeanor  
 20 and upon conviction:

21 (i) For a first offense, shall be subject to a fine of not more than  
 22 \$1,000 or imprisonment for not more than 1 year or both;

23 (ii) For a second offense, shall be subject to a fine of not more  
 24 than \$2,000 or imprisonment for not more than 2 years or both; and

25 (iii) For a third or subsequent offense, shall be subject to a fine of  
 26 not more than \$3,000 or imprisonment for not more than 3 years or both.

27 (2) Notwithstanding any other provision of this title, a person who  
 28 violates [paragraph (2), (3), or (4) of] subsection (a)(2), (3), OR (4) of this section is  
 29 guilty of a misdemeanor and upon conviction:

30 (i) For a first offense, shall be subject to a fine of not more than  
 31 \$500 or imprisonment for not more than 2 months or both; and

32 (ii) For a second or subsequent offense, shall be subject to a fine  
 33 of not more than \$1,000 or imprisonment of not more than 1 year or both.

34 ~~(F)~~ (F) If a person is charged with a violation of this section, the court may find  
 35 the person guilty of any lesser included offense under any subsection of this section.

1 8-738.1.

2 (A) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE OPERATING OR  
3 ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE DEATH OF, OR A  
4 LIFE-THREATENING INJURY TO, ANOTHER PERSON AND THE PERSON IS  
5 DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE  
6 THAT THE PERSON WAS OPERATING THE VESSEL OR ATTEMPTING TO OPERATE  
7 THE VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY  
8 ALCOHOL, WHILE SO FAR IMPAIRED BY ANY DRUG, ANY COMBINATION OF  
9 DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE  
10 PERSON COULD NOT OPERATE THE VESSEL SAFELY, OR WHILE IMPAIRED BY A  
11 CONTROLLED DANGEROUS SUBSTANCE, THE PERSON SHALL BE REQUIRED TO  
12 SUBMIT, AS DIRECTED BY THE POLICE OFFICER, TO A TEST OF:

13 (1) THE PERSON'S BREATH TO DETERMINE ALCOHOL  
14 CONCENTRATION;

15 (2) ONE SPECIMEN OF THE PERSON'S BLOOD TO DETERMINE  
16 ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR CONTROLLED  
17 DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR

18 (3) BOTH THE PERSON'S BREATH UNDER ITEM (1) OF THIS  
19 SUBSECTION AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM (2) OF  
20 THIS SUBSECTION.

21 (B) IF A POLICE OFFICER DIRECTS THAT A PERSON BE TESTED, THEN  
22 THE PROVISIONS OF § 10-304 OF THE COURTS ARTICLE SHALL APPLY.

23 (C) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST REQUIRED BY  
24 THIS SECTION ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS A RESULT OF ANY  
25 ACT OR OMISSION RELATED TO SUCH TESTS, NOT AMOUNTING TO GROSS  
26 NEGLIGENCE.

27 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
28 effect October 1, 2010.